

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
Unified Certification Agreement, Policies & Procedures

Missouri Regional



Certification Committee

MISSOURI REGIONAL CERTIFICATION COMMITTEE

Unified Certification Partners

U.S. Department of Transportation Partners

Missouri Department of Transportation
Bi-State Development
City of Kansas City, Missouri
Lambert St. Louis Airport Authority
Kansas City Area Transportation Authority
Federal Highway Administration
Federal Transit Administration
Federal Aviation Administration

Sub-Recipient Partners

City Utilities of Springfield
City of St. Joseph
City of Springfield
City of Columbia
Mid America Regional Council
East West Gateway Coordinating Council

MISSOURI REGIONAL CERTIFICATION COMMITTEE

U.S. Department of Transportation Recipients

Bootheel Regional Planning & Economic Dev. Comm.	City of Liberty	County of Benton
Burlington Northern Railroad	City of Maplewood	County of Boone
Cape County Transit Inc	City of Marshall	County of Butler
City of Ballwin	City of Marshfield	County of Caldwell
City of Berkeley	City of Mexico	County of Callaway
City of Blue Springs	City of Moberly	County of Callaway-Bridge Fund
City of Bolivar	City of Monett	County of Cape Girardeau
City of Boonville	City of Neosho	County of Carroll
City of Branson	City of Nevada	County of Cass
City of Breckenridge Hills	City of New Madrid - Transit	County of Cedar
City of Butler	City of New Madrid Light & Power	County of Christian
City of Camdenton	City of North Kansas City	County of Clark
City of Cape Girardeau	City of Overland	County of Clay-Highway Dept
City of Carthage	City of Ozark	County of Crawford
City of Cassville	City of Pacific	County of Dade
City of Chillicothe	City of Pagedale	County of Daviess
City of Clayton	City of Palmyra	County of Dekalb
City of Clinton	City of Paris	County of Douglas
City of Columbia	City of Parkville	County of Dunklin
City of Cool Valley	City of Poplar Bluff	County of Franklin
City of Cottleville	City of Raymore	County of Gasconade
City of Crane	City of Republic	County of Geny
City of Creve Coeur	City of Republic - WPCP	County of Greene
City of Cuba	City of Rolla	County of Grundy
City of Dexter	City of Sikeston	County of Harrison
City of Eldorado Springs	City of Springfield	County of Henry
City of Ellisville	City of St. Charles	County of Holt
City of Excelsior Springs	City of St. John	County of Howard
City of Farmington	City of St. Joseph	County of Iron
City of Ferguson	City of St. Louis	County of Jackson
City of Florissant	City of St. Peters	County of Jackson-Public Works
City of Fredericktown	City of St. Robert	County of Jasper
City of Fulton	City of Sullivan	County of Jefferson
City of Gladstone	City of Warsaw	County of Johnson
City of Grant City	City of Washington	County of Knox
City of Hannibal	City of Webster Groves	County of Laclede
City of Houston	City of West Plains	County of Lawrence
City of Independence	City of Weston	County of Lewis Commission
City of Jackson	City of Wildwood	County of Lincoln
City of Jefferson	City of Willow Springs	County of Linn
City of Jefferson City	City Utilities of Springfield	County of Livingston
City of Joplin	County of Macon Commission	County of Macon
City of Kansas City	County of Adair	County of Madison
City of Kearney	County of Andrew	County of Mercer
City of Kennett	County of Atchison	County of Miller
City of Kirksville	County of Barry	County of Mississippi
City of Lamar	County of Barton	County of Mississippi - Transit
City of Lee's Summit	County of Bates	County of Moniteau
		County of Monroe

MISSOURI REGIONAL CERTIFICATION COMMITTEE
U.S. Department of Transportation Recipients

County of Montgomery
County of New Madrid
County of Newton
County of Nodaway
County of Osage
County of Ozark
County of Pemiscot
County of Pemiscot - Port
County of Perry
County of Pettis
County of Phelps
County of Pike
County of Platte
County of Polk
County of Polk
County of Putnam
County of Ray
County of Ripley
County of Saline
County of Schuyler
County of Scotland
County of Shelby
County of St. Charles
County of St. Clair

County of St. Louis
County of Stoddard
County of Stone-Courthouse
County of Sullivan
County of Texas
County of Vernon
County of Vernon
County of Warren
County of Washington
County of Wayne
County of Worth
County of Wright
Dept. of Natural Resources
Division of Environmental
Dunklin County Transit Service
E/W Gateway Coord. Council
Franklin County Transportation
Gateway Western Railway
Green Hills Rural Development
Greene County Highway Dept.
Jackson Co. Parks & Rec.
Kansas City Southern Railway
Lamar City Utilities
Macon Chamber of Commerce
Madison County Transit District

Marion County Commission
Meramec Community
Enhancement
Mississippi County Port Authority
Missouri Public Transit Assoc.
Missouri Transportation Finance Corp.
Missouri Vocational Enterprise
Mo & Northern Area RR Co Inc
Norfolk Southern Railroad Co
Oats Inc
Platte County Public Works Dept.
Ray County Transportation
Ripley County Transit Inc
Scott County Transit System
Southeast Missouri State Univ.
Southeast Missouri Transp. Service
Southeast Mo Reg. Port Auth.
Spirit of St Louis Airport
Springfield Branson Regional
Springfield-Greene County
St Louis City
St Louis Community College
St Louis County-Parks & Recreation
Stoddard County Transit Service
Town of Old Appleton
Union Pacific Railroad Company

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Unified Certification Process

The Disadvantaged Business Enterprise (DBE) requirements contained in 49 CFR §26 include a provision for a “one-stop” certification process. The process must be well defined and include all agencies that are recipients of federal funds from the United States Department of Transportation (USDOT).

Development of the UCP

The five agencies that receive direct USDOT funds and currently operate a USDOT approved DBE program are Missouri Department of Transportation (MoDOT), City of St. Louis, Missouri, Bi-State Development, Kansas City Area Transportation Authority (KCATA), and the City of Kansas City, Missouri and shall hereinafter be referred to as the “Direct Partners,” and shall constitute the members of the Missouri Regional Certification Committee (MRCC). All other Missouri agencies that receive indirect funding from the USDOT shall be referred to as “Sub-recipient Partners.”

The cooperation and efforts of all of the team members was key in the development of a UCP that all agencies could endorse. From the beginning, all participants actively worked to ensure cooperation and acknowledged that achieving the common goal was foremost. Participation of Metropolitan Planning Organizations (MPO) and Sub-recipients was essential for the successful implementation of any UCP developed.

The specific Sub-recipients of highway and enhancement funds, which are administered by MoDOT, were identified. All Sub-recipients were contacted by mail and asked to submit a DBE plan or as an alternative, adopt MoDOT’s DBE program. The program was available for review on MoDOT’s website and was provided to any entity requesting a hard copy. By adopting MoDOT’s program, the Sub-recipients also agreed to accept the UCP developed.

The Direct and Sub-recipient Partners developed the Unified Certification Program (UCP) agreement, agreed to all of the terms contained in this document, and made a commitment to implementation. In order to accomplish the goals of the regulations and the MRCC, policies and procedures are required. Policies and procedures have been established and incorporated herein as Attachment A. During the ratification process with the USDOT, MoDOT will act as the lead agency and has the ability to revise the UCP proposal in order to meet any USDOT requirements or requested revisions. MoDOT will update and communicate with the MRCC Partners throughout this process.

Upon approval by the USDOT of this document, all parties agree to execute this agreement. While there are a large number of “Sub-recipients” within the state, including counties, cities, airports, and other entities, it was not necessary to include all of those Sub-recipients in the development of the UCP. MoDOT will update and communicate with the MRCC Partners throughout this process.

Upon approval of the UCP process and agreement, all other recipients of any of the Partners will be asked to review and ratify the agreement, as well as make an affirmative statement of intent to

comply. The recipients will be subject to administrative review by the MRCC, their lead agency, or any branch of the USDOT.

Joint certification documents were developed, including an application letter, notification correspondence and certificates for approvals of eligibility. The MRCC agrees to use the joint documents as well as the Uniform DBE Application mandated by USDOT on May 9, 2024. Due to certain MoDOT constitutional limitations related to funding, it was agreed that a “Reciprocity” process would be the most effective way to accomplish the UCP. It was also agreed that the process would go beyond a mere reciprocity agreement. This solution allows each agency to maintain their staff and resources while achieving the requirements.

The Partners agreed on a process for assigning responsibility for certification to the participating Direct and Sub-recipients. While the Direct USDOT recipients will accept and process applications in their respective metropolitan areas, it may be burdensome for some recipients to travel to more rural sections of the state to conduct the required on-site visits. Therefore, rural certifications would remain the responsibility of MoDOT. However, it was decided that applicants in the transit or aviation services would be better served by an entity more familiar with their particular work type such as KCATA, Bi-State Development, City of St. Louis, or City of Kansas City.

According to the previously stated federal regulations, the Missouri UCP was fully implemented in January 2005.

Unified Certification Agreement

It is acknowledged that all Partners agree to the procedures, processes and requirements set out in this document. Further, it is agreed that all certification and non-discrimination obligations and requirements of 49 CFR §26 will be carried out by the MRCC and no recipient, direct or indirect, may accept any other DBE, MBE or WBE Certification for use on USDOT funded projects. All certification decisions within the state will be made and agreed to by the MRCC.

The UCP will not establish, recommend, or alter any agencies' overall DBE Program, DBE goal or methodology other than to supplement an approved program submittal process. DBE goal development, administration, monitoring, and reporting remains the sole responsibility of the agency with a USDOT approved DBE Program in accordance with 49 CFR §26, subject to any oversight requirements of the lead agency. Any agency which elects not to establish a DBE Program as set forth in 49 CFR §26 will be required to adopt and implement the lead agency's program. The lead agency in Missouri is the Missouri Department of Transportation (MoDOT), which is the funding agency for the majority of the recipient's USDOT federal funds.

All recipients of federal funds administered by the USDOT, either directly or indirectly, must ratify and comply with the UCP agreement. Failure to do so may result in the loss of federal funds from the MRCC Partners and/or the USDOT.

Communication

Sharing information on any matter related to the operation of the UCP is a core element of the process. All MRCC Partners agree to continue to communicate openly amongst each other. Communication can take the form of, but is not limited to, telephone conversations, conference calls, meetings, correspondence, electronic transmittals, and/or discussion databases.

If any MRCC Partner is in receipt of information that is necessary or critical to determining DBE eligibility, the MRCC Partner shall notify and submit the appropriate information to the MRCC or any individual Partner agency. Each MRCC Partner shall be notified of all status changes affecting certifications. All MRCC Partners shall be notified in advance of all certification and denial actions of each MRCC Partner.

Response to any "media" queries related to the MRCC or its activities may be made by the agency contacted. That agency will respond in a manner that will not subject any individual Partner agency or the UCP to criticism. Such queries shall be reported to all of the Partner agencies within 24 hours.

Reciprocity

All Partners agree that they will not execute any reciprocity agreements with any other agency or entity, including city, county, state, or federal agencies, binding that Partner, and subsequently the UCP, to a reciprocity agreement. The MRCC may elect to enter into a written reciprocity agreement with UCPs in other states or regions. The decision to execute such an agreement will be made by a majority vote of the Direct Partners of the MRCC – MoDOT, Kansas City Area Transportation Authority (KCATA), Bi-State Development, City of St. Louis, and City of Kansas City.

Agency Compliance

The Partners acknowledge there are many agency specific issues related to their agency's certification processes. The primary areas of concern are:

- Political Influence or Interference in Certification Decisions
- Incomplete Or Inadequate Definition of Processes or Procedures
- Non-Compliance With 49 CFR §26
- Quality Of Decisions

All Partners further acknowledge that in order for the UCP to succeed and the partners to maintain the level of trust needed to effectively comply with the UCP requirements it is necessary to implement minimum requirements for compliance, as well as a process for dealing with any agency that is found to be in non-compliance. All partners agree that the specific minimum requirements are:

- All decisions related to certification **must** be and will be made in compliance with 49 CFR §26. All partners and parties acknowledge that this requires the political independence to make decisions based upon the specific eligibility requirements.
- All Partners, members and participants agree to cooperate fully with oversight, review and monitoring activities of the U. S. Department of Transportation and its operating administrations.
- All appeals or hearings **must** be decided by the MRCC, a third party who was not involved in the determination.
- Outside entities such as construction boards or other politically mandated organizations cannot, and will not, be involved in the certification determinations, investigations of third-party challenges, or any administrative reconsideration or appeals.
- The MRCC Partners must have an approved DBE Program in place that clearly defines the role of the administrative staff. In addition, each Partner must have clearly defined written processes and procedures related to administration of the DBE Program and certification decisions.
- Any Partner with a DBE Program administered in conjunction with an MBE/WBE program must have the procedures and policies for the DBE program clearly separated and defined in writing. This includes eligibility requirements, data tracking, and removal/denial of certification.
- All Partners agree to make all decisions and recommendations on certification based purely upon the eligibility requirements, without consideration of political influence or other factors.
- All Partners agree that there is no “emergency” certification, nor is there a provision within 49 CFR §26 for “conditional” certification. The eligibility requirements are to be determined with the factors present at the time of application and the decision is to be made in compliance with 49 CFR §26.
- All Partners agree to implement all USDOT directives and guidance.

If any MRCC Partner feels that a particular agency is not complying with the requirements of 49 CFR §26, it may make a written complaint to the MRCC. The MRCC will review the complaint and circumstances. If a majority of the MRCC Partners, not including the complaining agency or the agency in question, agrees that the agency is not complying with the requirements, remedial action will be taken. The remedial action can take the form of one of the following:

- **Written Findings** – The MRCC may issue a formal written determination of the issues regarding that agency's certification, procedures, or practices. This determination will be sent to the senior management official or chief operating officer of the agency in question, the program administrator, and USDOT. It is hoped that the agency will review the procedures at issue and make improvements to the process in order to meet 49 CFR §26.
- **Monitoring & Concurrence** – The MRCC may issue a formal written determination as set out above, as well as provide a procedural review and concurrence process. It is the hope of the Partners that the agency in question will take this opportunity to gain additional knowledge and education of the regulations and requirements.

The agency in question will be required to gain MRCC concurrence in certification determinations for a specific period of time. Depending upon the situation, the MRCC may choose to "pair" the agency with another MRCC Partner or it may choose to require concurrence by a majority of the MRCC Partners. If an agency is paired with another agency and a dispute continues to exist, the MRCC will make the final determination.

- **Non-Compliance** – Should the MRCC make every effort to correct the deficiencies in an agency's certification process, extreme measures may be necessary. The MRCC may find that an agency is not acting in good faith and determine that the UCP will not accept firms certified by that agency until the required changes are implemented.

The MRCC recognizes that this is a method of last resort and would not apply this remedy liberally. In addition, the MRCC would not proceed with this remedy without notification to the USDOT, as well as the lead federal agency for the Partner agency. The MRCC further agrees that should the USDOT or the lead federal agency wish to assist or provide guidance on resolution, the MRCC would make every effort to resolve the situation prior to implementing this remedy.

Resources

All MRCC Partners agree that the resources necessary to accomplish the goals of 49 CFR §26, as well as those of the UCP agreement, must be present. It is not within the scope of this committee's responsibility or charge to dictate to the individual agencies the level of funding or resources necessary. All parties agree that an adequate level of funds, personnel, equipment, and other resources must be in place to comply with the requirements contained in 49 CFR §26; however, the individual agency processes will not change therefore we do not expect funding to be a problem. If at any time, the MRCC, any Partner, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), the Federal Aviation Administration (FAA) or the U.S. Department of Transportation (USDOT) conclude that one or more of the Partners does not have sufficient resources in place to ensure compliance, a written notification should be sent to the Direct partners, as well as the Office of Civil Rights for the FHWA, FTA, FAA and USDOT.

Training

All MRCC Partners recognize the need for continued training for staff members, as well as recipients and agency management personnel. The MRCC Partners will embark upon ongoing in-service opportunities in order to update the Partners, as well as the staff members. Many of these opportunities may be in conjunction with other UCPs, states, or entities.

The Partners agree that all agencies and staff members must complete a minimum of one training session within one year of the UCP ratification. In addition, any new staff members will complete training within a reasonable time from date of hire, not to exceed one year. The training session must be specifically aimed at DBE certification in compliance with 49 CFR §26 and sponsored by an agency that administers a program in compliance with those regulations. The training can also be sponsored by any USDOT agency including FHWA, FTA or FAA. If new DBE regulations or revisions are published, the MRCC Partners agree to sponsor a joint training session to update the agencies and staff members.

The Partners agree to develop and maintain a series of training sessions aimed at improving the certification processes of the various Partners, as well as provide for consistent eligibility determinations. The MRCC will seek the assistance of the USDOT, FTA, FHWA, FAA and any other agency to provide guidance and training. The MRCC will seek continued training sponsorship from the Partners in conjunction with any contracts that may be in place. If there are no contracts in place, the Partners agree to rotate the duties for planning and conducting the yearly training session.

Supportive Services

The MRCC Partners agree that the efforts of all of the agencies could be combined to provide additional and meaningful training to all of the DBE firms. The Partners agree to develop a communication effort to ensure that all agencies are notified of the upcoming training and given an opportunity to assist in the training and development activities.

Joint efforts to improve the viability of DBE firms are encouraged. The Partners agree that combined resources and joint opportunities to provide technical assistance benefit the DBE firms and all agencies. In addition, the Partners agree to seek out opportunities to “pilot” or develop innovative ideas to increase the success of DBE firms.

Data Requirements

One of the major issues necessary for detailing the certification status, DBE Directory development and maintaining communication between MRCC Partners are data requirements and facilities. MoDOT be responsible for will track DBE certified firms in a centralized database. The Certifying Partners will maintain current data related to the firms they certify and support. The Certifying Partners will send MoDOT an excel spreadsheet by close of business on each Friday to make updates, revisions, and additions.

MoDOT will be the database manager and continue to work to develop the common database, including agency specific reporting needs and download capabilities. The MRCC Partners agree that all changes, updates, additions, or deletions to a specific firm’s record would be made in a timely manner and be submitted to MoDOT by the close of business each Friday. MoDOT will upload all changes, deletions, and additions within two business days.

The DBE Directory will be available in real time online through this system, as well as available for printing, as necessary, by each agency.

MRCC Meetings

The MRCC shall hold a meeting every other month. Frequency of the MRCC meetings is subject to change upon action by the committee. Notification of any such changes will be made in advance. The MRCC's meetings are "open" meetings within the requirements of state law. Each agency shall post advance notice of meetings in a location open to the public. The meetings will not be advertised in any publication or other medium. The meeting notice will include a contact person and telephone number. The meeting agenda will be set 2 days prior to a regularly scheduled meeting.

A majority of the Direct Partners is needed for a quorum. There are currently 6 voting members. A total 4 members must be present in order for voting to occur. Only the official designated representative, or an approved alternate, from each Direct Partner agency may vote. All votes will be recorded. If the vote is not unanimous, each member's specific name and vote will be recorded. Minutes may be available for public viewing upon request.

Minutes for each meeting will include the agenda and those in attendance and missing.

Recipients

Any USDOT agency located in the state of Missouri, whether a direct or sub-recipient of DOT funds, and is not party to the initial consolidation process shall be considered a recipient. Recipients must have a USDOT approved DBE program as specified in 49 CFR §26. All recipients must become signatories to the Missouri UCP Agreement and comply with its provisions.

ATTACHMENT A

UCP POLICIES AND PROCEDURES

DBE Certification Determinations

Disadvantaged Business Enterprise (DBE) Certification is the process by which all firms seeking to participate in the Missouri Regional Certification Committee's (MRCC) DBE Program are determined to have met the requirements set forth in 49 CFR §26. This guidance provides the policies and procedures of the MRCC for certifying firms as DBE's. These policies and/or procedures are not all inclusive, and therefore, reference to 49 CFR §26 is required. The provisions of 49 CFR §26, or as amended, will control to the extent of any inconsistencies with these policies and/or procedures.

The MRCC shall review and make an eligibility determination on all firms applying for DBE certification. The decision of a MRCC Certifying Partner with regard to an eligibility determination on a firm applying for DBE certification shall be regarded as the decision of the MRCC. The MRCC Certifying Partners are the Missouri Department of Transportation, City of St. Louis-Lambert Airport, Bi-State Development, City of Kansas City, Missouri, and Kansas City Area Transportation Authority.

The MRCC Partners in the St. Louis area shall review applicant firms that are located in the St. Louis Metropolitan Statistical Area (MSA), which includes St. Louis City, St. Louis County, Jefferson County, St. Charles County, Lincoln County, Warren County, and Franklin County.

The MRCC Partners in the Kansas City area shall review applicant firms that are located in the Kansas City MSA, which includes Kansas City, Jackson County, Cass County, Clay County, Platte County, and Ray County.

MoDOT will review applicant firms statewide.

The MRCC Partners agree that after the geographical area has been ascertained, the firm's primary type of work or industry will be ascertained by the agency reviewing the submission and the applications will be divided by industry or primary market.

Specifically, the Partners agree to industry designations in the following manner:

- Bi-State Development and KCATA will review applicants that are primarily transit oriented services or products. These may include, but are not limited to, transit services, maintenance services, maintenance products or transportation services.
- St. Louis-Lambert Airport, KCATA, and the City of Kansas City will review all ACDBE applications.

All MRCC Partners agree that there may be exceptions to assignments based upon familiarity with the firm, historical knowledge, or resources.

The MRCC recognizes that each Certifying Partner conducts certification reviews for DBE certification. The MRCC also recognizes that some Certifying Partners, in addition to administering a DBE Program, administer a local MBE/WBE Program that is separate from the DBE Program. Any firms certified under the local MBE/WBE program will not be included in Missouri's Unified Certification Program unless qualified and certified under 49 CFR §26. When a Certifying Partner obtains a firm's records and reviews that firm for certification eligibility (regardless of the firm's disposition), it then becomes the Agency of Record. Any future eligibility requests, reapplication (if a firm is denied certification and reapplies),

inquiries, etc., must be handled by the Agency of Record -- the MRCC Certifying Partner with whom the certification records reside. A firm will not be allowed to transfer their certification to another MRCC certifying Partner. The MRCC Certifying Partner who initially certifies the firm will remain the entity responsible for maintaining the firm's certification.

Airport Concession Disadvantaged Business Enterprise (ACDBE) Designation

The MRCC shall review and make an eligibility determination on applicant firms in accordance with 49 CFR §26 and 49 CFR §23 that are participating or seeking opportunities to participate as an ACDBE. The MRCC will perform the review of eligibility for ACDBE certification of applicant firms that are seeking airport concession opportunities or are participating in airport concession activities. St. Louis-Lambert Airport, KCATA and the City of Kansas City will review all ACDBE applications.

References to DBEs throughout this document are inclusive of ACDBEs unless expressly excluded.

NAICS Codes

The MRCC agrees to certify all firms in compliance with 49 CFR §26, including designating specific work types. The Partners agree to use the NAICS codes for those designations. All firms will be informed of the specific codes and a short narrative description of that designation. On the unified certification application (UCA), applicants must describe in detail (with examples whenever possible), the type(s) of work they envision performing on DOT-assisted contracts. The UCA will not be considered complete if the applicant omits this information. If the applicant identifies workscopes that would likely result in opportunities to participate in or has no intention of pursuing participation in DOT-assisted contracts, the partner should encourage the applicant to withdraw its UCA.

Social Disadvantage Determinations

Citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found disadvantaged by the Small Business Administration will maintain the rebuttable presumption by the MRCC of being a socially disadvantaged individual. The definitions of those groups are set out in Appendix A, attached, and incorporated by reference.

Pursuant to 49 CFR §26.67(a)(3), if the MRCC has a well-founded reason to question whether an individual is a member of a group presumed to be socially disadvantaged, the MRCC will require the individual to demonstrate, by a preponderance of the evidence, that he/she is a member of such group. In making that determination, the MRCC will consider whether or not the person has held himself/herself out to be a member of the group over a long period of time prior to application for certification and whether the relevant community regards the person as a member of the group.

The MRCC may require the applicant to produce appropriate documentation of group membership. If the applicant marks the Native American box on the Uniform Certification Application (UCA) they are required to provide proof of enrollment in a federally recognized Indian Tribe, as the State of Missouri does not recognize any Indian Tribes, or proof that the individual is Alaska Native or Native Hawaiian. Examples of proof of Tribal enrollment include, but not limited to, a Tribal identification card or a letter from a Tribal leader. US DOT recognizes that Alaska Natives and Native Hawaiians do not necessarily possess Tribal enrollment documents. MRCC certifiers must verify government-recognized documentation

submitted by Alaska Natives or Native Hawaiians, such as enrollment documents from the U.S. Department of the Interior or a State agency. MRCC certifiers are given latitude/leeway in determining whether there is a well-founded reason to question someone's claim of presumptive group membership. The MRCC certifier's view a well-founded reason must not be a mere suspicion or a bare expression of the MRCC certifier's opinion and must fully explain the basis for the well-founded reason and reference specific evidence in the record. The procedures for questioning the membership of a transgender individual, or one whose gender identification is inconsistent with that individual's birth certificate, are the same as questioning the group membership of any other individual. If, after proper inquiry, the MRCC certifier rebuts a transgender individual's membership in the "female" group, the MRCC certifier must deny the application and inform the individual of the right to apply under 49 CFR §26.67(d) (Non-Presumptive Disadvantage) at any time and of the right to appeal to US DOT. If the applicant does not check the box for "female" and does check the box for "other" and lists "transgender", the MRCC certifier must inform the applicant that "transgender" is not a group whose members are presumed socially and economically disadvantaged (SED) and explain the option of applying under 49 CFR §26.67(d). The MRCC's decision concerning membership in a designated group will be subject to the certification appeal procedures.

Economic Disadvantage Determinations

Economically disadvantaged individuals are those who have been determined to have an individual personal net worth below the statutory cap set out in 49 CFR §26.68. The MRCC requires submission of financial information from each individual claiming economic disadvantage. The MRCC may attribute to any individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member or a trust, a beneficiary of which is an immediate family member, for less than fair market value within the prior 2 years of the application.

Pursuant to 49 CFR §26.68, the MRCC will require each individual owner of a firm applying to participate as a DBE and whose ownership interest is relied upon for DBE certification to submit a Declaration of Eligibility (DOE) and a corroborating personal net worth (PNW) statement, including required attachments. The owner must report PNW on the form, available at <https://www.Transportation.gov/DBEFORMS>. A certifier may require an owner to provide additional information on a case-by-case basis to verify the accuracy and completeness of the PNW statement. The certifier must have a legitimate and demonstrable need for the additional information. If an individual's Statement of Personal Net Worth shows the individual's personal net worth exceeds the statutory cap in place, the individual's presumption of economic disadvantage will be rebutted. The MRCC is not required to have a proceeding in order to rebut the presumption of economic disadvantage.

Pursuant to 49 CFR §26.68 The Department will adjust the PNW cap by May 9, 2024 by multiplying \$1,600,000 by the growth in total household net worth since 2019 as described by "Financial Accounts of the United States: Balance Sheet of Households (Supplementary Table B.101.h)" produced by the Board of Governors of the Federal Reserve (<https://www.federalreserve.gov/releases/z1/>), and normalized by the total number of households as collected by the Census in "Families and Living Arrangements" (<https://www.census.gov/topics/families/families-and-households.html>) to account for population growth. The Department will adjust the PNW cap every 3 years on the anniversary of the initial adjustment date described in this section. The Department will post the adjustments on the Departmental Office of Civil Rights' web page, available at <https://www.Transportation.gov/DBEPNW>. Each such adjustment will become the currently applicable PNW limit for purposes of this regulation.

If the MRCC has a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged the MRCC may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. The MRCC must follow the procedures set forth in 49 CFR §26.87. The MRCC may require the individual to produce additional information relevant to the determination of his/her disadvantage.

When an individual's presumption of social and/or economic disadvantage has been rebutted, his/her ownership and control of the firm cannot be used for purposes of DBE eligibility unless, and until, he/she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds the statutory cap, the individual is no longer eligible for participation in the DBE Program and cannot regain eligibility by making an individual showing of disadvantage.

Individual Determinations of Social and/or Economic Disadvantage

Pursuant to 49 CFR §26.67, firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may be certified by the MRCC as a DBE on a case-by-case basis. The MRCC will follow the rules set out in 49 CFR §26.67(d) to make these determinations.

Business Size Determinations

- (a) NAICS Code: In accordance with 49 CFR §26.65, in order to be an eligible DBE, a firm (including its affiliates) must be a small business as defined by the Small Business Administration (SBA). The MRCC certifier must apply current SBA business size limits found in 13 CFR §121 which corresponds to the applicable primary industry classifications (NAICS codes). The firm is ineligible when its affiliated "receipts" (computed on a cash basis), as defined in 13 CFR 121.104(a) and averaged over the firm's preceding five fiscal years, exceed the applicable SBA size cap(s).
- (b) Statutory Cap: Even if a firm is a small business under paragraph (a) of this section, it is ineligible to perform DBE work on FHWA or FTA assisted contracts if its affiliated annual gross receipts, as defined in 13 CFR §121.104, over the firm's previous three fiscal years exceed \$30.40 million (as of March 1, 2023). The Department will adjust this amount annually and post the adjusted amount on its website available at <https://www.transportation.gov/DBEsizestandards>.

The above size standards do not apply to airport concessionaires, which are set forth in 49 CFR §23 Subpart C.

Ownership Determinations

In accordance with 49 CFR §26.69, in determining whether the socially and economically disadvantaged owner (SEDO) in a firm owns the firm, the MRCC will consider all the facts in the record, viewed as a whole at the time of application.

To be an eligible DBE, a SEDO must own at least 51 percent (51%) of each class of ownership of the firm and each SEDO whose ownership is necessary to the firm's eligibility must demonstrate that his/her ownership satisfies the requirements of 49 CFR §26.69(a-g) or deemed ineligible.

Control Determinations

In accordance with 49 CFR §26.71, in determining whether socially and economically disadvantaged owners (SEDO) control a firm, the MRCC will consider all the facts in the record, viewed as a whole at the time of application.

Applicant firms cannot be denied DBE certification for the following: differences in remuneration, the SEDO is employed outside the firm, ownership and leasing of equipment, ability of non-SEDOs to bind the firm without SEDO's consent, and use of employee leasing companies. When the SEDO is employed outside the firm, the MRCC certifier needs to consider the effect on outside employment as they determine whether a SEDO is in a position to really run the business of an applicant firm. For example, when a SEDO has a full-time job for another employer, how does the SEDO find the time to analyze information and make independent decisions for the applicant firm? How does the SEDO communicate with employers and customers if the SEDO has duties for another employer that conflict, in the terms of time and place, with the applicant firm's work? The applicant has the burden of proving to the MRCC certifier that the SEDO can do everything needed to control the firm, notwithstanding the SEDO's duties for another employer. Delegations by a SEDO with outside employment must meet the same requirement as other delegations; the SEDO must remain in active control of those to whom the SEDO has delegated duties.

Only an independent business may be certified as a DBE. An independent business is one in which viability does not depend on its relationship with another firm or firms. In determining whether a potential DBE is an independent business, the MRCC will scrutinize relationships with other DBE firms and non-DBE firms in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources. The MRCC will consider present or recent employer/employee relationships, the firm's relationship with prime contractors, and other factors related to the independence of a potential DBE firm.

Further, the MRCC will consider the consistency of relationships between the potential DBE and other DBE firms and non-DBE firms with normal industry practice.

A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day, as well as long-term, decisions on matters of management, policy, and operations.

In a corporation, disadvantaged owners must control the Board of Directors. In addition, the disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president). In a partnership, one or more disadvantaged individual must serve as general partner(s) with control over all partnership decisions.

Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not possess or exercise the power to control the firm or be disproportionately responsible for the operation of the firm. The SEDOs may delegate various areas of management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated.

The managerial role of the socially and economically disadvantaged owner(s) in the firm's overall affairs must be such that the MRCC can reasonably conclude that the socially and economically disadvantaged owner(s) actually exercise control over the firm's operations, management, and policy.

The socially and economically disadvantaged owners must have an overall understanding of the business, as well as managerial and technical competence directly related to the type of business in which the firm is engaged, and the firm's operations.

Even if the state or local law requires the person(s) to have a particular license or other credential in order to own and/or control a certain type of firm, the SEDO does not need to possess the required license or credential as long as someone other than the SEDO within the firm does possess the required license or credential or the business as an entity holds the required license and as long as the SEDO meets all of the control requirements of 49 CFR §26.71. However, in order to perform work that requires a particular license or other credential, either the SEDO, someone within the SEDO's firm, or the SEDO's firm itself must hold a Missouri license for the profession which requires a license or credential. MRCC certifiers may approve the SEDO firm for certification; however, any employees within the SEDO firm will not be permitted to perform professional services or other services that require a license in Missouri until a license for that specific professional service has been obtained for the State of Missouri. Missouri Revisor Statute that related to professional services and occupational requirements include but are not limited to RSMo Chapters 324-346.

It is not essential for the SEDO in a trucking or transportation company to personally hold a CDL (commercial driver's license); as long as the SEDO establishes control of the company as section 49 CFR §26.71 requires. The MRCC will consider differences in compensation between SEDOs and other participants in the firm, in the context of the duties involved, normal industry practices, and the firm's policies and practices.

Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member) and ownership and/or control were transferred to a socially and economically disadvantaged individual, the former owner is required to immediately become uninvolved with the company or other business that performs similar work or contracts with the applicant firm other than a lessor or provider of standard support services.

In determining whether a firm is controlled by its SEDO(s), the MRCC will consider whether the firm owns equipment necessary to perform its work. The MRCC will not determine that a firm has failed to demonstrate that it is controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice, and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

The MRCC may certify a business operating under a franchise or license agreement if it meets the standards in 49 CFR §26.71(h), and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the MRCC will generally not consider restraints relating to standardized quality, advertising, accounting format, and other provisions imposed by the franchise agreement or license, provided the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership.

In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner, to contractually bind the partnership or subject the partnership to contract or tort liability.

Burdens of Proof

In accordance with 49 CFR §26.61, the firm seeking certification has the burden of demonstrating to the MRCC, by a preponderance of the evidence, i.e. more likely than not, that it satisfied all of the requirements in this subpart. In determining whether the firm has met its burden, the MRCC certifier must consider all the information in the record, viewed as a whole.

(1) **Exception 1.** In a decertification proceeding the certifier bears the burden of proving, by a preponderance of the evidence, that the firm is no longer eligible for certification under the rules of this part.

(2) **Exception 2.** If a certifier has a reasonable basis to believe that an individual who is a member of a group in 49 CFR §26.67(a) of this section is not, in fact, socially and/or economically disadvantaged, the certifier bears the burden of proving, by a preponderance of the evidence, that the individual is not socially and/or economically disadvantaged.

Ownership

For purposes of determining ownership, the MRCC will deem as held by a socially and economically disadvantaged individual all interests in a business or other assets obtained by the individual as long as the requirements set out in 49 CFR §26.69 are met in terms of:

- Acquisition: The SEDO acquires ownership at fair value and by one or more “investments,” as defined in paragraph (c) of this section.
- Proportion: No owner derives benefits or bears burdens that are clearly disproportionate to their ownership shares.
- Maintenance: This section’s requirements continue to apply after the SEDO’s acquisition and the firm’s certification. That is, the SEDO must maintain her investment and its proportions relative to those of other owners.

The MRCC will strictly adhere to the parameters around investments as outlined in 49 CFR §26.69(c), which may be in the form of a purchase, capital contribution, or gift. Additionally, debt financed investments will be reviewed in accordance with 49 CFR §26.70.

Other Considerations

Commercially Useful Function

Except as provided under Pattern of Conduct, the MRCC will not consider commercially useful function issues in making decisions about whether to certify a firm as a DBE. Consideration of whether a firm performs a commercially useful function pertains solely to counting any participation of firms that have already been certified as DBEs toward meeting DBE goals.

Pattern of Conduct

In making certification decisions, the MRCC will consider whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

Present Circumstances

The MRCC will evaluate the eligibility of a firm on the basis of present circumstances and will not refuse to certify a firm based solely on historical information indicating lack of ownership or control by socially and economically disadvantaged individual(s) at some time in the past if the firm currently meets ownership and control standards. The MRCC will not refuse to certify a firm solely on the basis that it is a newly formed firm.

DBE Cooperation

The MRCC expects all participants in the MRCC's DBE Program, including DBE firms and firms seeking DBE certification, to cooperate fully with requests for information relevant to the certification process, as well as any other requests for information from the USDOT. Failure or refusal to provide such information is grounds for denial, removal of certification, or any other remedies as may be provided by 49 CFR §26.109 (c).

For-Profit Firms

Only firms organized for profit may be eligible as a DBE. Not-for-profit organizations, although controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

Subsidiaries

A subsidiary firm may be certified as a DBE if it meets the requirements set out in 49 CFR §26.63(b). The SEDO must own 51% of the subsidiary, with no more than 1 tier of separation between the subsidiary and the parent firm.

Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

Pre-qualification for Bidding

The MRCC will not require that a DBE firm be pre-qualified as a condition for certification unless the MRCC requires all firms that participate in its contracts and subcontracts, or in a particular contract or subcontract be pre-qualified. Firms must be familiar with the pre-qualification process with each of the MRCC partners prior to bidding on projects.

Tribal Organizations

The MRCC recognizes that a firm owned by a federally recognized Indian tribe, Alaska Native Corporation, or Native Hawaiian organization as an entity, rather than by Indians, Alaska Natives, or Native Hawaiians as individuals, may be eligible for certification as long as such firm meets the size standards and is controlled by socially and economically disadvantaged individuals.

Missouri DBE Certification Procedures

In accordance with 49 CFR §26.83, the MRCC will ensure that only firms certified as eligible DBEs participate in the DBE Program. The MRCC will determine the eligibility of firms as DBEs consistent with the standards of 49 CFR §26, Subparts D and E.

Applicants are evaluated based on documentation in existence at the time of application. Any changes in ownership and control after a determination of certification by the Certifying Partner will not be considered. These changes include, but are not limited to, execution of new agreements, board or shareholders' resolutions, memoranda of understanding, consolidation, liquidation, reorganization, merger, election of new officers or directors, appointment of new principals or key personnel or the purchase or sale of shares or issuance of new shares.

The MRCC Certifying Partner will require potential DBEs to complete and submit an appropriate application form. The Certifying Partner will assure that the applicant attests to the accuracy and truthfulness of the information on the application form by signing the Declaration of Eligibility (DOE) located at the end of the application. The Certifying Partner will review all information on the form prior to making a decision about the DBE eligibility of the firm.

Pursuant to 49 CFR §26.83(m), except as otherwise provided in this paragraph, if an applicant for DBE certification withdraws its application before the Certifying Partner has issued a decision on the application, the applicant firm can resubmit the application at any time. Should the applicant firm choose to resubmit its application to the MRCC, it must resubmit its application to the same Certifying Partner (Agency of Record) that initially obtained the firm's records to review for certification eligibility. The Certifying Partner may not apply the twelve (12) month waiting period provided under 49 CFR §26.86(c) before allowing the applicant firm to resubmit its application. However, the Certifying Partner may place the reapplication at the "end of the line," behind other applications that have been submitted to the Certifying Partner since the applicant firm's previous application was withdrawn. The Certifying Partner may also apply the twelve (12) month waiting period provided under 49 CFR §26.86(c) to a firm that has established a pattern of frequently withdrawing applications before the Certifying Partner renders a decision.

A certifier may notify the applicant about ineligibility concerns and allow the firm to rectify deficiencies within the remaining time period of the original 90 days. If a firm takes curative measures before the certifier renders a decision, the certifier must consider any evidence it submits of having taken such measures. The certifier must not automatically construe curative measures as successful or abusive.

The Certifying Partner may request additional information if there is insufficient evidence upon which to base a determination. No action will be taken on an application until all items have been submitted. Applicants who fail or refuse to submit information deemed necessary for certification review will not be certified. If any information requested is not available or applicable, the applicant must provide a written explanation.

If additional information is required, the Certifying Partner will notify the applicant and will allow the applicant 15 calendar days for submittal of the information. An extension of time may be granted if reasonable justification for delay is provided. If the complete information or justification is not received within 15 calendar days, the Certifying Partner will issue a final request by certified mail,

e-mail, or fax. The final request will provide for submission of the information within 7 calendar days. Failure to submit all of the requested information at the end of the 7 calendar days may result in denial of the firm's DBE application. The firm may appeal this determination to the USDOT, as provided for in 49 CFR §26.89.

Any applicant who wishes to apply for certification whose file has been closed or denied must follow the procedures for initial application. The firm must re-apply to the original agency of record one year from the date of notification of denial from original certifying agency.

The Certifying Partner will take all of the following steps in determining whether a DBE firm meets the eligibility standards set forth in 49 CFR §26:

- Perform a desk audit where all of the applicant's submissions are reviewed for internal consistency, accuracy and conformity with the eligibility standards set forth in Federal Regulations, 49 CFR §26.
- Visit the firm's principal place of business, virtually or in person, and interview the SEDO, officers, and key personnel and review their resumes and/or work histories. Maintain a complete audio recording of the interview. Visit one or more active job sites (if there are any). These activities comprise the "on-site review" (OSR), a written report of which must be kept in applicant firm's file.
- In certain circumstances, may rely upon the site visit reports of any other USDOT funded agency or UCP.
- Analyze the ownership of stock, partnership agreements, and/or operating agreements in the firm, as well as any other documents related to organizational structure.
- Analyze the bonding and financial capacity of the firm.
- Determine the work history of the firm, including contracts received, and work completed.
- Determine the type of work for which the firm will receive DBE participation credit.
- Verify the firm's preferred location(s) for performing the work.
- Obtain a list of equipment owned by or available to the firm.
- Check the USDOT Office of Civil Rights' (DOCRs) Ineligibility Determination Online Database for ineligibility.
- Must ensure the SEDO signs the Declaration of Eligibility (DOE).

The Certifying Partner will make decisions on applications for DBE certification for Missouri based firms within 90 days of receiving all required information from the applicant. The Certifying Partner may extend this time period once, for no more than an additional 30 days, upon written notice to the firm explaining the reasons for the extension. All firms certified by the Certifying Partners under 49 CFR §26 and §23 will be included in the MRCC's DBE Directory and database.

The UCP must check the DOCR website upon receipt of a new DBE application or annual DOE. For any such firm that is on the list you must promptly request a copy of the listed decision from the UCP that made it. As the UCP receiving such a request, you must provide a copy of the decision to the requesting UCP within seven (7) days of receiving the request. As the UCP receiving the decision, you must then consider the information in the decision in determining what, if any, action to take regarding the certified DBE firm or application.

The MRCC will not impose an application fee for firms to participate in the DBE certification process.

Request for Information

When another USDOT funded agency or UCP makes a written request to the Certifying Partner for information related to an application for DBE certification, the Certifying Partner will make the information available within 30 calendar days. Consent from the certified firm to release this information to an MRCC partner, another State's UCP, or USDOT is not required, as outlined in 49 CFR §26.68(e) & 49 CFR §26.109(a)(2). However, release of any documents to any third party that may reasonably be construed as confidential business information may only be provided to the third party with the written consent of the firm that submitted the information.

Certification Reviews

Once the Certifying Partner has certified a firm as a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of 49 CFR §26.87. Partners shall not require currently certified DBE firms to reapply for certification or require "recertification". However, partners may conduct a certification review of a certified DBE firm, including a new on-site review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under 49 CFR §26.83(i) or relating to suspension of certification under 49 CFR §26.88), requiring notice under a complaint, or other information concerning the firm's eligibility. If information comes to the Certifying Partner's attention that leads you to question the firm's eligibility, the partner may conduct an on-site review on an unannounced basis, at the firm's offices and job sites. Firms that have not shown any changes during the certification review or no other information received indicating changes have occurred, then those corporations or partnerships will be subject to an on-site review every five (5) years. All interviews, in-person or virtual, must be audio recorded. This follows certification reviews as described in 49 CFR §26.83(h)(2).

Confidentiality of Information

The MRCC and its Certifying Partners shall safeguard from disclosure to unauthorized persons all information gathered as part of the certification process that may be regarded as proprietary or other confidential business information, consistent with applicable federal, state, and local laws, unless applicant authorizes such disclosure. The certifying partners will not provide any information contained in the DBEs file to a third-party unless written approval is received from the DBE firm. If an MRCC Partner, another State's UCP, or USDOT requests DBE certification information, it may be released to these entities without the DBE's consent, as outlined in 49 CFR §26.68(e) & 49 CFR §26.109(a)(2).

NAICS Code Addition and Removal

The MRCC will grant certification to a firm only for specific types of work in which the SEDOs have demonstrated the ability to control the firm. When approving the initial certification of a firm, the Certifying Partner will grant NAICS codes that describe, as specifically as possible, the principal goods or services which the firm would provide to DOT recipients. If there is not a NAICS code that fully, clearly, or sufficiently narrowly describes the type(s) of work for

which the firms seek certification, the Partner must supplement the assigned NAICS code(s) with a clear, specific, and concise narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is insufficient. The additional detail must be listed in the “REMARKS” section of the MRCC directory, with these descriptions being derived, as much as possible, from the Census Bureau’s corresponding NAICS code index entries.

To become certified in an additional type of work, the firm must demonstrate only that its SEDOs are able to control the firm with respect to that type of work. The MRCC will not require that the firm be renewed or submit a new application for certification but will verify the SEDOs control of the firm relevant to the additional type of work. A firm may request modification and/or additions to their approved NAICS Codes by completing the “Request for NAICS Code Review” form and submit to the appropriate Certifying Partner along with the requested supporting documentation which demonstrates the DBE firm has operations in the scopes of work that it is seeking additional certification. Supporting documents may include, but are not limited to quotes, invoices to customers/prime contractors, or signed contracts/subcontracts for work relevant to the requested NAICS code(s). Additionally, if the new scope of work requires equipment or facilities that the DBE did not previously have, the DBE must provide copies of purchase documents, lease agreements and titles as applicable to equipment or facilities needed for the requested scope of work.

In circumstances where a Certifying Partner makes a preliminary determination to remove a NAICS code from a currently certified firm or to deny NAICS code(s) requested by the certified DBE firm, the Certifying Partner will provide the firm a written explanation of the reasons for the preliminary decision specifically referencing the evidence in the record that supports the decision. The Certifying Partner who wishes to remove or deny the NAICS code(s) from the certified DBE firm has the burden to show, by a preponderance of the evidence, that the firm is not qualified to have a particular NAICS code(s). Removal or denial of a NAICS code(s) shall follow the same procedures as Removal of Eligibility. Firms shall keep their respective NAICS codes from notice through appeal to MRCC.

Certification and Eligibility of Airport Concession Disadvantaged Business Enterprises (ACDBEs)

Except as provided herein, the procedures and standards of 49 CFR 26, [§ 26.61-91](#), shall apply to certification of ACDBEs to participate in concession program activities at St. Louis-Lambert Airport (SLA), KCATA and the City of Kansas City. SLA and the City of Kansas City will review all ACDBE applications. In accordance with 49 § 23.31 (a), certification decisions for ACDBEs will be made by the MRCC.

Business Size Determinations

As provided by 49 CFR § 23.33, except as provided below, firms must be treated as a small business eligible to be certified as an ACDBE if the gross receipts of the

applicant firm and its affiliates, calculated in accordance with [13 CFR 121.104](#) averaged over the firm's previous five fiscal years, do not exceed \$56.42 million.

The following types of businesses have size standards that differ from the aforementioned standard:

- (1) ***Banks and financial institutions.*** \$1 billion in assets.
- (2) ***Passenger car rental companies.*** \$75.23 million average annual gross receipts over the firm's previous five fiscal years.
- (3) ***Pay telephones.*** 1,500 employees; and
- (4) ***New car dealers.*** 350 employees.

For size purposes, gross receipts, as defined in [13 CFR 121.104\(a\)](#), of affiliates should be included in a manner consistent with [13 CFR 121.104\(d\)](#), except in the context of joint ventures. For gross receipts attributable to joint venture partners, a firm must include in its gross receipts its proportionate share of joint venture receipts, unless the proportionate share already is accounted for in receipts reflecting transactions between the firm and its joint ventures (e.g., subcontracts from a joint venture entity to joint venture partners).

Personal Net Worth (PNW)

An owner whose PNW exceeds \$2,047,000 is not presumed economically disadvantaged.

USDOT will adjust the PNW cap by May 9, 2027 by multiplying \$1,600,000 by the growth in total household net worth since 2019 as described by “Financial Accounts of the United States: Balance Sheet of Households (Supplementary Table B.101.h)” produced by the Board of Governors of the Federal Reserve (<https://www.federalreserve.gov/releases/z1/>), and normalized by the total number of households as collected by the Census in “Families and Living Arrangements” (<https://www.census.gov/topics/families/families-and-households.html>) to account for population growth. The USDOT will adjust the PNW cap every 3 years on the anniversary of the adjustment date described in this section. The USDOT will post the adjustments on the US Departmental Office of Civil Rights' web page, available at <https://www.Transportation.gov/DBEPNW>. Each such adjustment will become the currently applicable PNW limit for purposes of these Policies and Procedures.

Eligibility of Certified Disadvantaged Business Enterprises

Firms that are certified as a DBE under part 26 are presumed to be eligible to participate as an ACDBE. By meeting the size, disadvantage (including personal net worth), ownership and control standards of part 26, the firm will have also met the eligibility standards for part 23. SLA and the City of Kansas City must ensure that the disadvantaged owners of a DBE firm certified under part 26 have the ability to control the firm with respect to its activity in the concessions program.

The MRCC is not required to certify a part 26 DBE as a part 23 ACDBE if the firm does not perform work or provide services relevant to the airport's concession

program. Work relevant to the airport's concession program may include operating a concession or providing goods and services to a concession.

After reviewing the DBE firm and their ability to control the firm with respect to its activity in the airport concessions program, if approved, the firm shall receive the ACDBE designation, updated in the MRCC database of certified ACDBEs and provided a MRCC certificate indicating the ACDBE designation and the applicable NAICS codes.

Additional ACDBE Certification Requirements

- (a) The provisions of 49 CFR [§ 26.83\(c\)\(1\)](#) do not apply to ACDBE certifications. In determining whether a firm is an eligible ACDBE, SLA and the City of Kansas City must take the following steps:
- (1) Visit the firm's principal place of business, virtually or in person, and interview the SEDO, officers, and key personnel. You must review those persons' résumés and/or work histories. You must maintain a complete audio recording of the interviews. The certifier must also visit one or more active job sites (if there is one). These activities comprise the "on-site review" (OSR), a written report of which the certifier must keep in its files.
 - (2) Analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, articles of incorporation/organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued certificates of good standing.
 - (3) Analyze the bonding and financial capacity of the firm; lease and loan agreements; and bank account signature cards.
 - (4) Determine the work history of the firm, including any concession contracts or other contracts it may have received, and payroll records.
 - (5) Obtain or compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive.
 - (6) Obtain a statement from the firm of the type(s) of concession(s) it prefers to operate or the type(s) of other contract(s) it prefers to perform.
 - (7) Obtain complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 5 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service; and

- (8) Require applicants for ACDBE certification to complete and submit an appropriate application form, except as otherwise provided in 49 CFR § 26.85.
- (b) In reviewing the Declaration of Eligibility, SLA and the City of Kansas City must ensure that the ACDBE applicant provides documentation that it meets the applicable size standard in 49 CFR [§ 23.33](#).
- (c) The term **prime contractor** in 49 CFR § 26.87(j) includes a firm holding a contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient.
- (d) With respect to firms owned by Alaska Native Corporations (ANCs), the provisions of 49 CFR § 26.63(c)(2) do not apply. The eligibility of ANC-owned firms is governed by 49 CFR § 26.63(c)(1).
- (e) SLA and the City of Kansas City must use the Uniform Certification Application found in 49 CFR Part 26 without change. However, , with the written approval of the concerned Operating Administration, the form may be supplemented by requesting specified additional information consistent with 49 CFR Part 23. The applicant must state that it is applying for certification as an ACDBE and complete all of section 5 of the application.
- (f) Car rental companies and private terminal owners or lessees are not authorized to certify firms as ACDBEs. As a car rental company or private terminal owner or lessee, you must obtain ACDBE participation from firms which have been certified as an ACDBE through MRCC.

Fostering Small Business Participation in the ACDBE Program

As part of its ACDBE Program STL and City of Kansas City must include an element to provide for the structuring of concession opportunities to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of concession opportunities that may preclude small business participation.

The ACDBE Small Business Element will comply with the requirements of 49 CFR §23.26 and mirror similar requirements in the DBE Program.

Interstate Certifications

The MRCC will not certify a firm having its principal place of business outside the State of Missouri if the firm is not first certified in its Jurisdiction of Original Certification (JOC). Pursuant to 49 CFR §26.85, a DBE firm that holds a current, valid certification from its JOC may request certification to the MRCC and its Certifying Partners.

Interstate DBE firms requesting certification in Missouri will need to submit 1) a short cover letter with its application that specifies the DBE firm is applying for interstate certification in Missouri, identifies all UCPs in which the DBE is certified (including the UCP that originally certified it), 2) a current electronic image of the JOC UCP directory showing the DBE certification, and 3) a signed DOE. The cover letter may also list any licenses (e.g., business, or professional licenses) that the firm holds. The Certifying Partner has 10 business days of receiving the required documents to confirm certification of the Interstate DBE.

If the DBE fulfills the requirements listed in 49 CFR §26.85(c) and the UCP confirms the DBE's certification per 49 CFR §26.85(d), the UCP must certify the DBE within the next 10 business days, without undergoing further procedures and provide the DBE with a letter documenting its Missouri DBE certification.

Post-Interstate Certification Proceedings

Following certification, and in accordance with 49 CFR §26.85(g) the Certifying Partner may request a fully unredacted copy of all, or a portion of, the DBE's certification file from any other UCP in which the DBE is certified. The UCP is required to provide the information to the MRCC requesting Partner within 30 calendar days of receiving the request.

Interstate firms are required to submit a signed DOE to its JOC each year on the anniversary date of its certification. The interstate firm is also responsible for submitting a signed DOE to Missouri and all other states in which they are DBE certified, on the anniversary date of its certification with their JOC.

Once certified, the interstate firm is treated the same as any other DBE for all purposes, including notices of change pursuant to 49 CFR §26.83(i).

Please see 49 CFR §26.85(h) regarding the interstate decertification process.

DBE Certification Continuing Eligibility

The MRCC agrees that it is the responsibility of the Certifying Partners to notify DBE firms of the due date of their annual review. In addition, the Certifying Partner will update all data related to the annual review in the database designated by the MRCC. All Certifying Partners are responsible for monitoring the compliance of DBE firms, however, it is the primary responsibility of the Certifying Partner to ensure firms give the necessary notification of any change in circumstances affecting the firm's ability to meet the size, disadvantaged status, ownership, or control requirements or any material change in the information provided in the application for Missouri based firms or the DOE for interstate firms. All Certifying Partners agree to certify all firms in compliance with 49 CFR §26 and §23, including designating specific work types. The Certifying Partners agree to use the NAICS codes for those designations.

Notice of Any Changes

Once certified, a DBE firm must inform the Certifying Partner, in writing, of any changes in circumstances affecting the firm's ability to meet size, disadvantaged status, ownership, or control requirements, or any material change in the information provided in the certification application process as outlined in 49 CFR §26.83(i). The statement must include supporting documentation describing in detail the nature of such changes. Changes in management responsibility among members of a limited liability company are also covered by this requirement.

The DBE must notify the certifier of a material change in its circumstances that affects its continued eligibility within 30 days of its occurrence, explain the change fully, and include a duly executed DOE with the notice. The DBE's non-compliance is a 49 CFR §26.109(c) failure to cooperate.

If a certified firm notifies the Certifying Partner of a change in its circumstances, and the Certifying Partner determines there is reasonable cause to believe the firm is ineligible, the Certifying Partner will provide written notice setting forth the reasons for the proposed determination. The findings must specifically reference the evidence in the record upon which the decision is based.

Annual Review and Declaration of Eligibility (DOE)

On the anniversary date of DBE certification, the DBE firm must provide each certifier a new DOE along with the specified documentation in 49 CFR §26.65(a), including gross receipts for its most recently completed fiscal year, calculated on a cash basis regardless of the DBE's overall accounting method. The sufficiency of documentation (and its probative value) may vary by business type, size, history, resources, and overall circumstances. However, the following documents may generally be considered "safe harbors," provided that they include all reportable receipts, properly calculated, for the full reporting period: audited financial statements, a CPA's signed attestation of correctness and completeness, or all income-related portions of one or more (when there are affiliates) signed Federal income tax returns as filed. Non-compliance, whether full or partial, is a 49 CFR §26.109(c) failure to cooperate.

MRCC partners will conduct an on-site review with certified firms every five (5) years after the DBE's last on-site review. If it has been more than five (5) years since the last on-site review, an on-site review will be conducted on a rotating basis until all DBE firms are on a five (5) year cycle. For interstate DBE firms, the MRCC partner will contact the JOC to request a copy of the most recent on-site review.

Cooperation

All participants in the DBE program are required to cooperate fully and promptly with DOT and Certifying Partner's compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment). If a DBE firm fails to provide this information in a timely manner, the DBE firm will be deemed to have failed to cooperate and certification may be removed as set forth in 49 CFR §26.109(c).

Summary Suspension of Certification

The Certifying Agency shall immediately suspend a DBE's certification without adhering to the requirements in 49 CFR §26.81(d) when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated, the certifier has clear and credible evidence of the DBE's or SEDO's involvement in fraud or other serious criminal activity, or the Operating Administration so directs.

The Certifying Agency may immediately suspend a DBE's certification without adhering to the requirements in 49 CFR §26.87(d) when (i) there is clear and credible evidence of the DBE's continued certification poses a substantial threat to program integrity. If a firm fails to timely file the annual Declaration of Eligibility and gross receipts, while 49 CFR §26.88(2)(ii) permits this as an elective suspension, each Certifying Agency shall move to decertify firms in accordance with 49 CFR §26.109(c), failure to cooperate.

In determining the adequacy of the evidence to issue a suspension under this paragraph, the certifying agency shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

When a firm is suspended pursuant to this paragraph the certifying agency shall immediately notify the DBE, by email, of its summary suspension notice (SSN) on a business day during regular business hours. The SSN must explain the action, the reason for it, the consequences, and the evidence on which the certifier relies. The SSN must demand that the DBE show cause why it should remain certified and provide the time and date of a virtual show-cause hearing at which the firm may present information and arguments concerning why the certifier should lift the suspension. The SSN must also advise that the DBE may provide written information and arguments in lieu of or in addition to attending the hearing.

Hearing procedures will comply with the process outlined in 49 CFR §26.88(d)(2-6) and appeal procedures defined in 49 CFR §26.88(e).

Small Business Enterprise (SBE) Certification

To facilitate competition by small business on projects funded in part by the DOT, the MRCC has implemented a Small Business Development Program as mandated in 49 CFR §26.39. This program fosters small business growth and competitive bidding on USDOT funded projects. The program operates in race and gender-neutral manner and is designed to include all segment of the region's business community. The program is open to participation without regard to race, color, sex, religion, national or ethnic origin, age, or disability. The MRCC uses the Small Business Administration's (SBA's) definition and size standards (as it may be amended from time to time) to define a small business as:

“...a small business concerns is one that is independently owned and operated, is organized for profit, and is not dominant in its filed. Depending on the industry, size standard eligibility is based on the average number of

employees for the preceding twelve months or on sales volume averaged over a three-year-period.”

The MRCC will ensure that Small Business Enterprises shall have an equal opportunity to participate in the performance of USDOT-funded contracts. By creating a level playing field on which SBEs can complete fairly for those contracts and subcontracts, participating agencies will further:

- (1) Help remove barriers to the participation of SBEs in USDOT funded contracts.
- (2) Assist in the development of firms that can compete successfully in the marketplace outside the SBE program; and
- (3) Develop and maintain a program in order to facilitate contracting opportunities for small business.

The MRCC’s Small Business Enterprise Program will mirror the DBE Program. To be eligible as an SBE, firms must:

- (1) Fall within the SBA’s size guidelines; and
- (2) The Owner’s personal net worth (PNW) cannot exceed the cap determined by USDOT (as amended) based upon the statutory regulation.
- (3) DBEs, by definition, are small businesses and will be automatically included in the SBE program.

In order to participate in the MRCC’s SBE program, non-certified DBE firms must complete a “Small Business Enterprise Declaration of Certification Affidavit” developed by the MRCC. Firms that have an SBA 8(a) Business Development Certification, as described in 13 CFR Parts 121 and 124, may submit a copy of its certificate. Firms that are not certified as 8(a) firms by the SBA must submit:

- (1) A copy of business tax returns for the most recent five-year period indicating the gross receipts; or
- (2) If the SBA uses the number of employees to determine small business eligibility, a copy of the firm’s payroll statement indicating the average annual employment for the most recent year.
- (3) A Personal Net Worth Statement completed by the owner of the firm.

All firms that are SBE certified will be included in the MRCC database that is available to the public.

Minority and women-owned business enterprises which are awarded contracts under the Small Business Enterprise program will be strongly encouraged to seek DBE certification in order to be counted towards race neutral DBE participation.

Appeal/Hearing Process

The applicant and all parties present at the hearing shall conduct themselves in a manner consistent with the standards of judicial decorum accepted by the courts of Missouri. The Hearing Officer will have the authority to take any action necessary to enforce these standards during the hearing.

For Denial of Initial Certification

Pursuant to 49 CFR §26.86, when a certifier denies a firm's request for certification or decertifies the firm, the certifier must provide the firm a Notice of Decision (NOD), explaining the reasons for the adverse decision, specifically referencing the evidence in the record that supports each reason. A certifier must also include, verbatim, the instructions found on the Departmental Office of Civil Rights' web page, available at <https://www.transportation.gov/dbeappeal>.

"If you want to file an appeal, you must email the Department at DBEAppeals@dot.gov within 45 days of the date of this decision, including a narrative that explains fully and specifically why you believe the decision is in error, what outcome-determinative facts the certifier did not consider, and/or what part 26 provisions the certifier misapplied. Include the certifier's name, date of the certifier's decision, and your contact information. If you do not have access to email, you may send a letter to:

U.S. Department of Transportation
Departmental Office of Civil Rights
Disadvantaged Business Enterprise Program Division
1200 New Jersey Avenue SE
Washington, DC 20590"

The certifier must promptly provide the applicant copies of all documents and other information on which it based the denial if the applicant requests them.

The certifier must establish a waiting period for reapplication of no more than 12 months. That period begins to run the day after the date of the decision letter is emailed. After the waiting period expires, the denied firm may reapply to any member of the UCP that denied the application. The certifier must inform the applicant of that right, and specify the date the waiting period ends, in its decision letter.

An appeal does not extend the waiting period.

The Certifying Partner will enter the denial into the USDOT's Office of Civil Rights' Ineligibility online database within five (5) days of the date of the decision.

For Removal of Eligibility

In circumstances where a certified firm, or a new applicant firm, has submitted a personal net worth statement that shows an individual's personal net worth exceeds the statutory requirement there will be no administrative re-consideration of the decision to decertify the firm.

In circumstances where a certified firm fails to cooperate fully and promptly as required in 49 CFR §26 its certification will be removed pursuant to 49 CFR §26.87. The MRCC will hold an

administrative hearing to determine removal of eligibility. The MRCC decisions are appealable to the USDOT. A firm may be removed from the group hearings if the required information is submitted to the certifying agency a week prior to the scheduled hearing date.

Pursuant to 49 CFR §26, when a Certifying Partner makes a preliminary determination to remove the eligibility of a firm currently certified, the Certifying Partner will provide the firm a written explanation of the reasons for the preliminary decision specifically referencing the evidence in the record that supports the decision. The denying Certifying Partner has the burden to show, by a preponderance of the evidence, that the firm does not meet the eligibility requirements set forth in 49 CFR §26. These procedures for removal of eligibility also apply to a firm which exceeds business size standards, as determined by the Certifying Partner.

The denying Certifying Partner will not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the Certifying Partner at the time of its certification of the firm. The Certifying Partner will base such decision only on one or more of the following:

- Changes in the firm's circumstances since the certification.
- Information or evidence not available at the time of certification.
- Information that was concealed or misrepresented by the firm in previous certification actions.
- Change in the certification standards or requirements of USDOT since the firm was certified.
- A documented finding that the agency's determination to certify the firm was factually erroneous.
- Violation of any provision of 49 CFR §26 that specifically authorizes removal of eligibility.

First, if the DBE firm in question is certified by any other UCP's, the Certifying Partner must notify those UCP's in which the DBE firm is certified ("other jurisdictions") via email of its intent to remove the firm's eligibility. The notice to other UCPs must explain the reasons for believing the DBE's certification should be removed. The other jurisdictions have 30 days after the notice is sent to provide the Certifying Partner a concurrence or non-concurrence with the proposed action. If a jurisdiction fails to respond within 30 days will be deemed to be a concurrence. Once all timely responses have been received, the Certifying Partner must make an independent decision whether to issue a Notice of Intent to the DBE firm and what grounds to include. Other UCPs may, before the hearing, submit written arguments and evidence concerning whether the firms should remain certified, but may not participate in the hearing.

Following the receipt of any responses from other UCP's and a decision to move forward with removal is made, the Certifying Partner will email a notice of intent (NOI) to the DBE, which must clearly and succinctly state each reason for the proposed action, and specifically identify the supporting evidence for each reason. The NOI must notify the DBE of its right to respond in writing, at an informal hearing, or both and also inform the DBE of the hearing scheduled on a date no fewer than 30 days and no more than 45 days from the date of the NOI. The

notice will be sent by email with a delivery and read receipt, inform the firm of the consequences of the Certifying Partner's decision, and of the availability of an appeal to the MRCC. If the ground for decertification is that the DBE has been suspended or debarred for conduct related to the DBE program, the MRCC certifier issues a Notice of Decision (NOD) decertifying the DBE. In this case, there is no NOI or opportunity for a hearing or written response.

If the DBE wants a hearing, it must email the certifier saying so within 10 days of the NOI. If the DBE does not do so, it loses its opportunity for a hearing. The certifier and DBE may negotiate a different hearing date from that stated in the NOI. Parties must not engage in dilatory tactics. If the DBE does not want a hearing or does not give timely notice to the certifier that it wants one, the DBE may still provide written information and arguments to the certifier rebutting the reasons for decertification stated in the NOI.

If the firm requests a hearing with the MRCC, the hearing will be an open hearing, and the firm may appear in person at that time; however, the firm is not required to do so. The firm must notify the MRCC by 12:00 p.m. ten (10) calendar days prior to the hearing if it intends to appear in person and/or with legal counsel at the hearing. In the event the firm is not able to attend the hearing it will be allowed one continuance. Additional continuances may be approved by the MRCC Committee. A complete record of the hearing, either in writing, video, or audio. All hearings must be recorded. Consent to record must be obtained by all individuals attending the hearing. This consent should be obtained prior to the hearing. The MRCC will notify the appellant of the date of the next available MRCC hearing date and the deadline for submission of supporting documentation. No appeal will be considered unless included on the agenda for the meeting and all agenda items must be finalized 30 days prior to the meeting.

Legal counsel may accompany, assist, and ask clarifying questions on behalf of the SEDO during the MRCC hearing; however, the SEDO shall be prepared to speak on behalf of the firm, respond to questions, or otherwise make a presentation. A non-SEDO or other individuals involved with the DBE may attend the hearing and answer questions related to their own experience or more generally about the DBE's ownership, structure, and operations. The SEDO will be limited to a period of thirty (30) minutes to address the MRCC. Reasonable accommodations will be made for those with disabilities with 48-hour notice to the MRCC.

The SEDO has the option to submit supporting documentation or other information for the hearing committee to review. All documentation to be considered by the MRCC hearing committee must be submitted no later than fifteen (15) calendar days prior to the hearing date. The MRCC hearing committee will review all information submitted pertaining to the decertification, including the firm's file and any supporting evidence submitted by the DBE firm. A majority vote of the MRCC hearing committee will determine the firm's continued eligibility as a DBE under the federal regulations. The MRCC hearing committee must be made up of individuals who did not take part in actions leading to or seeking to implement the proposal to decertify the DBE and is not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

In the event of a tie vote, upon the conclusion of the presentation and deliberation of the evidence, the member representative serving as the hearing officer shall cast the first vote. Other member representative's votes shall follow. In the event of a tie vote, the vote of the hearing officers shall carry and be deemed the Committee's decision. In the event of a

tie vote, in which the hearing officer has abstained, the Committee shall continue deliberating until a decision can be reached by simple majority. If the Committee remains deadlocked on the third business day after the first tie vote, the agency's initial decision to decertify shall be denied and the firm will remain certified.

A NOD must be emailed by the MRCC and must describe with particularity the reason(s) for the MRCC's decision, including specific references to the evidence in the record that supports each reason, within thirty (30) days of the informal hearing and/or receiving written arguments/evidence from the firm in response to the NOI. The NOD must also inform the firm of the consequences of the decision and of its appeal rights under 49 CFR §26.89. The MRCC must send copies of the NOD to the complainant in an ineligibility complaint or to the OA that directed the certifier to initiate the proceeding. When sending a copy of an NOD to a complainant other than an OA, the MRCC must not include information reasonable construed as confidential business information, unless the MRCC has the written consent of the firm that submitted the information. The Decertifying Partner will enter the decertification into the USDOT's Departmental Office of Civil Rights Online portal within five (5) days of the action. The certifier must enter the name of the firm, name(s) of the firm's owner(s), date of decision, and the reason(s) for its decision. The firm remains certified until the NOD is issued.

When a firm is decertified, it is required to wait twelve (12) months before it may reapply for DBE certification with the MRCC Certifying Partner of record (agency of record). The time period for reapplication begins to run on the date the NOD is emailed to the DBE firm. A firm remains an eligible DBE during an appeal to the MRCC. If the MRCC makes a final decision to remove the firm's eligibility, that firm is no longer eligible as a DBE firm. The effective date of the MRCC's decision, or expiration of the time period to appeal to the MRCC, is the date the firm's eligibility is removed. The Certifying Partner will enter the denial into the USDOT's Departmental Office of Civil Rights Online portal within five (5) days of the date of the decision.

The decision by MRCC is final and no further appeals will be heard by the MRCC. The firm may appeal the decision of the MRCC to the Office of the Secretary of Transportation, U.S. Department of Transportation, Office of Civil Rights. If you want to file an appeal, you must email the Department at DBEAppeals@dot.gov within 45 days of the date of this decision, including a narrative that explains fully and specifically why you believe the decision is in error, what outcome-determinative facts the certifier did not consider, and/or what part 26 provisions the certifier misapplied. Include the certifier's name, date of the certifier's decision, and your contact information. If you do not have access to email, you may send a letter to:

U.S. Department of Transportation
Departmental Office of Civil Rights
Disadvantaged Business Enterprise Program Division
1200 New Jersey Avenue SE
Washington, DC 20590

Third Party Challenge Ineligibility Complaints

Any person or agency may file a written complaint with the Certifying Partner explaining, with specificity, why the certifier should decertify a DBE. The certifier need not act on a general allegation or an anonymous complaint. The certifier must keep complainants identifies confidential.

Within 60 days of receiving the information, the Certifying Partner must review its records concerning the DBE, any material the DBE and/or complainant provides, and any other available information. The Certifying Agency may request additional information from the DBE or conduct any other investigation that it deems necessary. If the Certifying Partner determines there is reasonable cause to decertify the DBE, it initiates a decertification proceeding. If it determines that there is not such reasonable cause, it notifies the complainant and the DBE in writing of its decisions and the reasons for it.

This process also includes internal MRCC Partner disputes.

USDOT Initiated Challenge

If a USDOT agency determines that information in the certification records or other information available provides reasonable cause to believe that a firm certified by the MRCC does not meet eligibility criteria, the USDOT may direct the MRCC via the Certifying Partner to initiate a proceeding to remove the firm's certification pursuant to 49 CFR §26.87 (b).

Appeals to USDOT

Firms that are issued a Notice of Decision for initial certification denial or decertification may appeal adverse NODs to the USDOT. Any certified firm who has been notified by an MRCC Certifying Partner of intent to remove eligibility may appeal to the MRCC or appeal directly to USDOT under 49 CFR §26.89.

An ineligibility complaint to the MRCC may appeal to USDOT if the MRCC does not find reasonable cause to issue an NOI to decertify or affirmatively determines that the DBE remains eligible. Pending the USDOT decision, the MRCC's decision remains in effect. If a firm wants to file an appeal, it must email or mail a letter to USDOT within 45 days of the date of the MRCC's final decision. The appeal must at a minimum include a narrative that explains fully and specifically why the firm believes the decision is in error, what outcome-determinative facts the MRCC did not consider and/or what part 26 provisions the MRCC misapplied.

An appellant firm challenging certification denial or removal by the MRCC must submit a letter with the name and address of any other USDOT grantee that currently certifies the firm, of any other grantees that may have rejected an application for certification from the firm or removed the firm's eligibility within one year prior to the date of the appeal, or of any other grantee with which an application for certification or action to remove eligibility is pending.

The MRCC will maintain a complete verbatim record of the hearing. If there is an appeal to USDOT, the MRCC will provide a copy of the MRCC's complete administrative record including a video, audio, or transcript of any hearing to USDOT. The MRCC will retain the original record of the hearing. The MRCC will ensure that the administrative record is well organized, indexed, and paginated and the MRCC must provide the appellant a copy of any supplemental information it provides to DOT.

Any party that appeals the MRCC's decision to USDOT will be requested by USDOT to promptly provide all information requested. The MRCC agrees to provide to USDOT the complete administrative record within 20 days of its request unless USDOT extends this time period. USDOT will make its decision based solely on the entire administrative record without conducting a hearing. When the MRCC provides information to USDOT, the same information will be made available to the firm and to any third-party complainant involved, consistent with applicable law.

USDOT may affirm the MRCC's decision unless it determines, based on the entire administrative record, that the decision is not supported by substantial evidence or is inconsistent with the substantive or procedural provisions concerning certification. If USDOT determines that the MRCC's decision was unsupported, USDOT may reverse the MRCC's decision and direct the MRCC to certify the firm or to remove its eligibility. The MRCC will take the action directed by USDOT immediately upon receiving written notice. USDOT is not required to reverse the MRCC's decision if it determines a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

If it appears that the record is incomplete or unclear, USDOT may remand the record to the MRCC with instructions seeking clarification or augmentation of the record before making a finding.

USDOT will not uphold the MRCC's decision based on grounds not specified in the MRCC's decision. USDOT's decision will be based on the status and circumstances of the firm on the date of the decision, which was appealed. USDOT will provide written notice of its decision to the MRCC, the firm, and the complainant in an ineligibility complaint. The notice will include the reasons for USDOT's decision. All decisions by USDOT are administratively final unless otherwise stated in USDOT's decision.

MRCC Actions Following USDOT Decision

Pursuant to 49 CFR §26.91, the decisions of USDOT are binding on all agencies within the MRCC.

If USDOT determines that the MRCC erroneously certified a firm, the MRCC must remove the firm's eligibility on receipt of the determination without further proceedings. If USDOT determines that the MRCC erred in a finding of no reasonable cause to remove the firm's eligibility, the USDOT will remand the case to the MRCC to determine whether the firm's eligibility should be removed.

If USDOT determines that the MRCC erroneously declined to certify or erroneously removed eligibility of the firm, the MRCC must certify the firm effective on the date of receipt of the written notice from USDOT. If USDOT affirms the MRCC's determination, no further action is necessary.

If the USDOT determines the the MRCC erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, the MRCC must take appropriate corrective action as determind by the USDOT.

Where the USDOT has upheld the MRCC denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other certifiers with whom the firm is certified may commence a proceeding to remove the firm's eligibility under 49 CFR §26.87. Such certifiers must not remove the firm's eligibility absent such a proceeding. Where USDOT has reversed the MRCC denial of certification to or removal of eligibility from a firm, other certifiers must take the USDOT action into account in any certification action involving the firm. However, other certifiers are not required to certify the firm based on the USDOT decision.

APPENDIX A

Definitions

Affiliation – the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR §121.

- (1) Except as otherwise provided in 13 CFR §121, concerns are affiliates of each other when, either directly or indirectly:
 - (i) One concern controls or has the power to control the other or
 - (ii) A third party or parties controls or has the power to control both; or
 - (iii) An identity of interest between or among parties exists such that affiliation may be found.
- (2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Airport Concession Disadvantaged Business Enterprise (ACDBE) – a firm seeking to operate as a concession that is a for-profit small business.

Alaska Native – a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) – any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

Assets – all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

Business, business concern or business enterprise – an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States, or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

Certifying Partner (Agency of Record) – The MRCC recognizes that each Certifying Partner conducts certification reviews for DBE certification. The MRCC also recognizes that some Certifying Partners, in addition to administering a DBE Program, administer a local MBE/WBE Program that is separate from the DBE Program. Any firm certified under the local MBE/WBE program will not be included in Missouri's UCP unless qualified and certified under 49 CFR §26. When a Certifying Partner obtains a firm's records and reviews that firm for certification eligibility (regardless of the firm's disposition), it then becomes the Agency of Record. Any future eligibility requests, reapplication, inquiries, etc., must be handled by the Agency of Record -- the MRCC Certifying Partner with whom the certification records reside.

Compliance – means that a recipient has correctly implemented the requirements of this part.

Concession – a for-profit business enterprise, located on an airport subject to this subpart that is engaged in the sale of consumer goods or services to the public under an agreement with the sponsor, another concessionaire, or the owner of a terminal, if other than the sponsor. Businesses that conduct an aeronautical activity are not considered concessionaires for purposes of this subpart. Aeronautical activities include scheduled and nonscheduled air carriers, air taxis, air charters, and air couriers, in their normal passenger or freight carrying capacities; fixed base operators, flight schools; and skydiving, parachute-jumping, flying guide services, and helicopter or other air tours.

- (1) Appendix A to 49 CFR §23 contains a listing of the types of businesses that are frequently operated as concessions.
- (2) Examples of entities that do not meet the definition of a concession include suppliers, flight kitchens and in-flight caterers servicing air carriers, government agencies, industrial plants, farm leases, individuals leasing hangar space, custodial and security contracts, individual taxis with permits, telephone and electric utilities, skycap services under contract with an air carrier, and management contracts.
- (3) Concessions may be operated under the following types of agreements:
 - a. Leases
 - b. Subleases
 - c. Permits
 - d. Contracts
 - e. Other instruments or arrangements

Concessionaire – one who operates a concession.

Contingent Liability – means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

Contract – a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

Contractor – one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Days – calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

Declaration of Eligibility (DOE) – Replaced the No Change Affidavit and must be signed prior to submittal. This form does not need to be notarized. The form declares under penalty of perjury that the SEDO is providing correct and accurate information.

Department or DOT – the U.S. Department of Transportation, including the Office of the Secretary, the Departmental Office of Civil Rights, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Direct ownership arrangement – a joint venture, partnership, sublease, licensee, franchise, or other arrangement in which a firm owns and controls a concession.

Disadvantaged Business Enterprise or DBE – for-profit small business concern --

- (1) That is at least 51 percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent (51%) of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-Assisted Contract – any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

DOT/SBA Memorandum of Understanding or MOU – agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) DB) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

FTA Tier I Recipient – an FTA recipient to whom this part applies that will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$670,000 in FTA funds in a Federal fiscal year.

FTA Tier II Recipient – an FTA recipient to whom this part applies who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which does not exceed \$670,000 in FTA funds in a Federal fiscal year.

Good Faith Efforts – efforts to achieve a DBE goal or other requirement of this part, which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Immediate Family Member – father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

Indian Tribe or Native American Tribe – any federally or State-recognized Tribe, band, nation, or other organized group of Indians (Native Americans) or an ANC.

Joint Venture – an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Jurisdiction of Original Certification (JOC) – State in which a DBE firm maintains its principal place of business.

Large Hub Primary Airport – a commercial service airport that has a number of passenger boardings equal to at least one percent of all passenger boardings in the United States.

Liabilities – financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

Management Contract or Subcontract – an agreement with a recipient or another management contractor under which a firm directs or operates one or more business activities, the assets of which are owned, leased, or otherwise controlled by the recipient. The managing agent generally receives, as compensation, a flat fee or percentage of the gross receipts or profit from the business activity. For purposes of this subpart, the business activity operated or directed by the managing agent must be other than an aeronautical activity, be located at an airport subject to this subpart, and be engaged in the sale of consumer goods or provision of services to the public.

Material Amendment – a substantial change to the basic rights or obligations of the parties to a concession agreement. Examples of material amendments include an extension to the term not provided for in the original agreement or a substantial increase in the scope, of the concession privilege. Examples of nonmaterial amendments include a change in the name of the concessionaire or a change to the payment due dates.

Medium Hub Primary Airport – a commercial service airport that has a number of passenger boardings equal to at least 0.25 percent of all passenger boardings in the United States but less than one percent of such passenger boardings.

Native Hawaiian – any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization – any community service organization serving Native Hawaiians in the State of Hawaii, which is a not-for-profit organization, chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance – that a recipient has not correctly implemented the requirements of this part.

Notice of Decision or NOD – determination that denies a firm's application or decertifies a DBE.

Notice of Intent or NOI – recipients letter informing a DBE of a suspension or proposed decertification.

Operating Administration or OA – any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Personal Net Worth or PNW – the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm or the individual's equity in his or her primary place of residence, or the individual retirement accounts held by the SEDO. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary Airport – a commercial service airport, which is determined by the Secretary to have more than 10,000 passengers enplaned annually.

Primary Industry Classification – the North American Industrial Classification System (NAICS) designation, which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual - United States, 1977 which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161: by calling 1(800) 553-6847; or via the Internet at: <http://www.ntis.gov/product/naics.htm>.

Primary Recipient – a recipient, which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal Place of Business – the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Program – any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-Conscious Measure or Program – focused specifically on assisting only DBEs, including women-owned DBEs.

Race-Neutral Measure or Program – is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

Recipient – any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary – the Secretary of Transportation or his/her designee.

Set-aside – a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or SBA – the United States Small Business Administration.

SBA Certified Firm – refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SBD programs.

Small Business Concern – means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

Small Business Concern – Concessionaire – a firm, including all its domestic and foreign affiliates, that qualifies under the applicable size standard set forth in appendix A to this subpart. In making a size determination, all affiliates, regardless of whether organized for profit, must be included. A firm qualifying under this definition that exceeds the size standard after entering a concession agreement, but that otherwise remains eligible, may continue to be counted as DBE participation until the current agreement, including the exercise of options, expires.

- (1) The Secretary may periodically adjust the size standards in appendix A to this subpart for inflation.
- (2) A firm that was certified as a minority/woman/or disadvantaged business enterprise (MBE/WBE/DBE) prior to the effective date of this subpart, pursuant to a requirement in §23.43(d) or FAA guidance implementing §511(a)(17) of the Airport and Airway Improvement Act of 1982, as amended, that has exceeded the size standard, may be counted as DBE participation until the current agreement, including the exercise of options, expires, provided that the firm remains otherwise eligible.

Small Hub Airport – a publicly owned commercial service airport that has a number of passenger boardings equal to at least 0.05 percent of all passenger boardings in the United States but less than 0.25 percent of such passenger boardings.

Socially And Economically Disadvantaged Owner (SEDO) – means any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa.
- b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.
- c. "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians.
- d. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong.
- e. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, Maldives, Nepal, or Sri Lanka.
- f. Women.
- g. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

Sponsor – the recipient of an FAA grant.

Spouse – a married person, including a person in a domestic partnership or a civil union recognized under State law.

Subconcession – a firm that has a sublease or other agreement with a prime concessionaire rather than with the airport itself, to operate a concession at the airport.

Sublease – a lease by a lessee (tenant) to a sublessee (subtenant). Sublease is an example of a subconcession in which the sublessee is independently responsible for the full financing and operation of the subleased concession location(s) and activities. A sublease passes on to the sublessee all requirements applicable to the concession under the primary lease, including proportionate share of the rent and capital expenditures.

Transit Vehicle Dealer – a firm that sells transit vehicles (including modified vehicles) made by a transit vehicle manufacturer (TVM), whether or not the dealer is “primarily engaged” in selling such vehicles.

Transit Vehicle Manufacturer (TVM) – any manufacturer whose primary business purpose is to manufacture vehicles built for mass transportation. Such vehicles include, but are not limited to buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Businesses that perform retrofitting or post-production alterations to

vehicles so that such vehicles may be used for public transportation purposes are also considered TVMs. Businesses that manufacture, mass-produce, or distribute vehicles primarily for personal use are not considered TVMs.

Tribally Owned Concern – any concern at least 51 percent owned by an Indian tribe as defined in this section.

Unsworn Declaration – an unsworn statement, dated and in writing, subscribed as true under penalty of perjury.

You – refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

APPENDIX B

List of Commonly Used Acronyms

ACRONYM	ACRONYMS MEANING
ACDBE	Airport Concessionaire Disadvantaged Business Enterprise
DBE	Disadvantaged Business Enterprise
DOE	Declaration of Eligibility
DOT	Department of Transportation
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
MIP	Mentor Protégé Program
GFE	Good Faith Effort
JOC	Jurisdiction of Original Certification
MoDOT	Missouri Department of Transportation
MRCC	Missouri Regional Certification Committee
NAICS	North American Industry Classification Standards
NOD	Notice of Decision
NOI	Notice of Intent
OA	Operating Administration
OSC	Original State of Certification
PNW	Personal Net Worth
SBA	Small Business Administration
SBE	Small Business Enterprise
SEDO	Social and Economically Disadvantaged Owner
TVD	Transit Vehicle Dealer
TVM	Transit Vehicle Manufacturer
UCA	Uniform Certification Application
UCP	Unified Certification Program
USDOT	United States Department of Transportation

APPENDIX C

DBE and ACDBE Forms

[DECLARATION OF ELIGIBILITY | US Department of Transportation](#)

[Uniform Certification Application | US Department of Transportation](#)

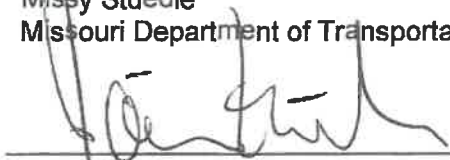
[Personal Net Worth \(PNW\) Statement | US Department of Transportation](#)

[DBE Regular Dealer – Distributor Affirmation Form](#)

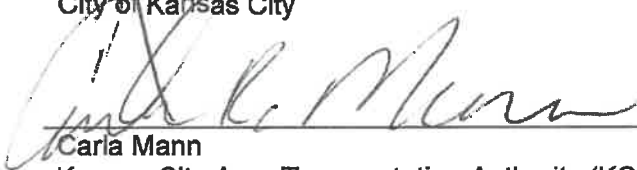
IN WITNESS WHEREOF, the parties have read and agreed to the terms contained herein. The parties have further caused this Unified Certification Proposal to be executed by their respective proper officials.


Missy Stuedle
Missouri Department of Transportation (MoDOT)

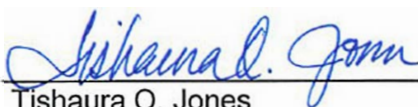
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Jaime Guillen
City of Kansas City

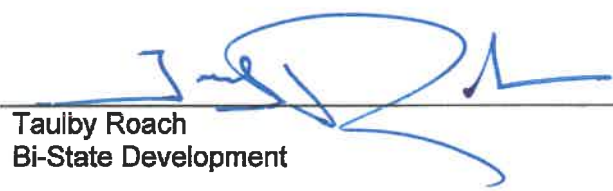
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Carla Mann
Kansas City Area Transportation Authority (KCATA)

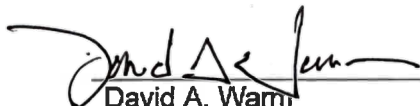
10/16/2024
DATE


Tishaura O. Jones
City of St. Louis - St. Louis Lambert International Airport

10/31/2024
DATE


Taulby Roach
Bi-State Development

10/24/24
DATE


David A. Warr
Mid-America Regional Council (MARC)

11/2/2024
DATE